IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

SUMMARY SUIT NO.3217 OF 2006

M/s. Nehawa Steel Traders ..Plaintiff.
Vs.
M/s. Coast Line Services & Ors. ..Defendants.

...

Ms. Kokila Kalra i/b Manjula Rao for the Plaintiff.
None for the Defendants.

....

CORAM: **DR. D.Y. CHANDRACHUD, J.**

25th April, 2007.

P.C. :

1. The Suit under Order 37 of the Code of Civil Procedure, 1908 has been instituted to recover an amount of Rs.10,65,731/- together with further interest on the principal sum of Rs.6,99,860/- at the rate of 21% per annum. The First Defendant placed an order through the Second Defendant for the supply of goods. The Plaintiff supplied goods of a total value of Rs.6,67,245/- under three invoices dated 11th March, 2004, 6th April, 2004 and 6th April, 2004 respectively. On instructions of the Defendants the goods were delivered to a

'destination at Goa'. Copies of the delivery challans and the invoices have been annexed to the Plaint. In respect of the transport loading and unloading charges, debit notes were raised by the Plaintiff upon the Defendants. A letter of demand was issued to the Defendants on 8th June, 2004 followed by a notice dated 13th May, 2006. There was no reply thereto.

2. The Defendants have been served with a writ of summons, but have failed to enter appearance. An affidavit of service has been filed. The Plaintiff has tendered a compilation of documents which is taken on record. The claim in the suit falls within the purview of Order 37 since the receipt of goods in pursuance of the purchase orders and invoices is not disputed. The claim arises under a written contract. In the circumstances, the Plaintiff will be entitled to a decree. However, insofar as the question of interest is concerned, it would be appropriate to award to the Plaintiff interest at the rate of 9% per annum from the respective dates of the invoices until the date of the suit and at the same rate from the date of the suit until realization.

The suit shall accordingly stand decreed in the amount of Rs.6,99,860/- with further interest on the outstandings due under the respective invoices as per the particulars of claim, Exh. A, from the due dates until the date of the suit and from the date of the suit until realization at the rate of 9% per annum. The Plaintiff would be entitled to costs of the suit.

3. The registry shall hand back the original documents to the learned advocate for the Plaintiff subject to tendering of photocopies of the originals and upon the photocopies being duly verified with the originals.

Refund of Court fees as per rules.